

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 281 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAVINBHAI RAMJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PJ YAGNIK for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 27/02/97

ORAL JUDGEMENT

(Per Pandya, J.)

The accused appellant came to be convicted for the offence punishable under sections 16, 20 of the NDPS Act as also section 66(a) and 66(b) of the Bombay Prohibition Act. He came to be awarded 10 years RI and fine of Rs.1,000 and in default to undergo sentence for

five years in respect of the first offence in respect of the second offence he is sentenced to undergo 5 years RI and fine of Rs.15,000/- and in default RI for 2 1/2 years. The learned Additional Sessions Judge, Bhavnagar, has specifically directed that the substantial sentences are not to run concurrently.

2 The learned advocate Mr Yagnik appearong for the appellant-accused drew our attention to the fact that the incident happened in an unusual manner. PW No.1 who happens to be the complainant - one Mr Mahavirsinh D Damor - was working as Assistant Collector, SDM, in Palithana, Bhavnagar. On 24th December 1980 at about 9.30 AM he was proceeding towards his office. Nearby the office he saw some people playing the cards with the money lying in the open space between them. He suspected breach of prevention of Gambling Act and therefore waited there to inquire of them. At that time he found suspicious looking small plastic bags containing white powder. He therefore immediately called the police and thereafter seizure of 200 g ganja and 50 g of opium was made from the said persons.

3 We agree with the learned advocate Mr Yagnik that there is serious lacuna in handling of the muddamal articles. On 26.11.1986 muddamal was obtained by PW No.3, D.J. Dave, Exh.17. At the relevant time he was working as a Constable in Prohibition Branch of NCB, Bhavnagar. It was handed to him for being carried to Forensic Science Laboratory. He did carry but only on 8.1.1987. Thus, in a short period of two days only muddamal which was seized on 24.12.1986 was given to him for being carried to Forensic Science Laboratory but thereafter how it was handled and where was it kept and wherther it was handled in a manner to avoid a possibility of being tampered, there is no evidence whatsoever. Under the circumstances, the authenticity and identity of the muddamal, in our opinion, cannot be said to be established beyond reasonable doubt. It may be noted that when he finally decided to proceed to Junagadh for delivering the said muddamal article on 8.1.1987 he did carry it alongwith other as many as 164 articles. He has admitted the same in his cross-examination that he carried 165 artricles for being delivered to Forensic Science Laboratory, Junagadh, on 8.1.1987.

In the aforesaid background, the appeal is allowed. The order of conviction and sentence is set aside. The appellant is ordered to be set at liberty forthwith if not required in any other case. Fine if

paid shall be refunded.

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